IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1053 OF 2004
IN
APPEAL FROM ORDER NO. 330 OF 1999.

Shri Bhikanlal Nanakchand Sharma. ... Petitioner.

V/s.

Shri Rajdeep Mahendra Sharma
and others. ... Respondents.

M.V.Limaye for the applicant.

P.G.Lad for the respondents.

CORAM: V.C.DAGA, J.

DATED: 21st September 2006.

P.C.:

. Since the order dated 19th July, 2004 is on merits, this application for setting aside abatement would not be maintainable, as such the same is liable to be rejected.

2. If one turns to the first part of the order dated 19th July, 2004, it seems that this Court did not stop there but proceeded to pass final order dismissing appeal against those who were not dead but present before the Court, consequently, impugned order became final and conclusive. There could not have been two inconsistent orders or decrees in one suit. In that view of the matter, appeal itself was

dismissed for the reasons recorded in the order. The order dismissing appeal has become final against those who were party to the appeal. If this civil application was to be allowed, it will result in restoration of appeal and will give rise to two inconsistent orders which is not permissible in law. [see Firdous Omar v. Bankim Chandra Daw, (2006) 6 SCC 569 (576)].

3. In view of the above, this application is rejected in limine with no order as to costs.

(V.C.DAGA, J.)